

LETTER OPINION
98-L-95

August 11, 1998

Mr. James O. Johnson
Sioux County State's Attorney
PO Box L
Fort Yates, ND 58538

Dear Mr. Johnson:

Thank you for your letter asking whether a county may impose the emergency service 911 excise tax on cellular phones.

N.D.C.C. § 57-40.6-02 authorizes a county to impose an excise tax on the use of telephone access lines. "Telephone access line" is defined as:

2. "Telephone access line" means the principal access to the telephone company's switched network including an outward dialed trunk or access register.

N.D.C.C. § 57-40.6-01(2).

The definition of telephone access line does not specify whether it is intended to include only wire or other cabling type of telephone connection or whether it may also include the radio type connection used by cellular telephones or other mobile radio telephones.

Where the Legislature has intended to apply taxes or other requirements to telephone style systems that include more than familiar telephone wires or cables, it has done so specifically. See, for example, N.D.C.C. §§ 49-21-01, 54-44.8-01, and 57-34-01, all of which deal with telephone services and systems specifically defining radio communications or cellular telephones as being included within the relevant definitions. Therefore, if the Legislature had intended the 911 emergency communications excise tax to include radio communications, such intent would have been expressed in its definition of telephone access line for purposes of N.D.C.C. ch. 57-40.6.

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"Generally, the law is what the Legislature says, not what is unsaid." Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993). "It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say." City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940). Furthermore, courts will not interpret a statute as though language not present should have been added. Bouchard v. Johnson, 555 N.W.2d 81, 83 (N.D. 1996).

Using the ordinary sense of the terms used (N.D.C.C. § 1-02-02), it is my opinion that the definition of telephone access line appearing in N.D.C.C. § 57-40.6-01 is not intended to include cellular telephones.¹

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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¹ Legislative defeat of proposed amendments on a subject cannot evidence what a prior Legislature intended when it first enacted a statute. State ex rel. Spaeth v. Eddy Furniture Co., 386 N.W.2d 901, 904 (N.D. 1986). However, you might be interested in the fact that the 1997 Legislative Assembly considered but defeated Senate Bill 2353. That bill would have substantially amended N.D.C.C. ch. 57-40.6, including defining wireless telephone service to include cellular telephones and mobile radio service and authorizing a wireless 911 service fee.